

**EXHIBIT A
to YOUNG DECL.**

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COUNSEL FOR DEFENDANT

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

MARY MAJOR, individually, and as the
representative of THE ESTATE OF
ELWYN WEBB; JOSHUA WEBB,

Plaintiff,

v.

SFPP, L.P.; KINDER MORGAN ENERGY
PARTNERS, L.P.; KINDER MORGAN G.P.,
INC.; KINDER MORGAN OPERATING
L.P. "D"; CALJET II LLC; SHELL OIL
COMPANY; EQUILON ENTERPRISES
LLC; CONOCOPHILLIPS COMPANY;
ATLANTIC RICHFIELD COMPANY
D/B/A ARCO PRODUCTS COMPANY;
CIRCLE K TERMINAL LLC; BP
PRODUCT NORTH AMERICA; EXXON
MOBIL CORPORATION D/B/A MOBIL
OIL CORP.; CHEVRON U.S.A. INC.; PRO-
PETROLEUM INC.; VALERO
MARKETING AND SUPPLY COMPANY;
JOHN DOES I-V; AND BLACK
CORPORATIONS I-V,

Defendants.

No. CV2018-003217

**DEFENDANT CONOCOPHILLIPS
COMPANY'S FIRST
SUPPLEMENTAL RULE 26.1
DISCLOSURE STATEMENT**

**(Assigned to the Honorable Margaret R.
Mahoney)**

1 Pursuant to Rule 26.1 of the Arizona Rules of Civil Procedure, Defendant ConocoPhillips
2 Company (“Defendant” or “ConocoPhillips”) hereby submits its first supplemental disclosure
3 statement.

4 **PRELIMINARY STATEMENT**

5 Initial disclosures are designed “to ensure that all parties are fairly informed of the facts,
6 legal theories, witnesses, documents, and other information relevant to the action.” ARIZ. R. CIV.
7 P. 26.1(c)(1). Parties must disclose the information in their possession, custody or control and that
8 which they “can ascertain, learn, or acquire by reasonable inquiry and investigation.” ARIZ. R. CIV.
9 P. 26(c)(2). Defendant’s understanding of Plaintiffs’ claims is dictated by the information disclosed
10 in Plaintiffs’ pleadings, responses to written discovery, certain depositions, and its own document
11 productions.

12 This is not a breach of contract dispute where it can be assumed that the plaintiff and
13 defendant have similar access to discoverable information. This is a case involving alleged
14 occupational exposure to motor fuels decades ago at locations that Defendant has not owned or
15 operated for many years. Therefore, Defendant’s disclosures are limited to what it can synthesize
16 from the information provided by Plaintiffs, co-defendants, and third parties. Defendant
17 understands its obligations and will at all times comply with its “continuing duty to supplement or
18 amend these disclosures as new or additional information is discovered or revealed.” ARIZ. R. CIV.
19 P. 26.1(d)(2).

20 Plaintiffs allege that Mr. Elwyn Webb (“Webb”) worked as a gasoline truck driver from
21 1985 to 2016 while employed by “Calzona Tankways and Coastal Transport Company, Inc.”
22 Comp. at ¶ 21. As a result of that work, Plaintiffs claim that Webb developed (and died from) a

1 form of cancer known as myelodysplastic syndrome (MDS). Comp. at ¶ 25. At the outset the
 2 Court should note that Defendant disputes a definitive diagnosis in this case of MDS. Defendant
 3 also disputes Plaintiffs' general causation theory—i.e., that exposure to fuels such as gasoline and
 4 diesel can cause this cancer (or any cancer) in humans.
 5

6 Plaintiffs filed this action against sixteen defendants claiming that each owned and/or
 7 operated “terminals and loading racks” where Mr. Webb allegedly worked as a gasoline truck
 8 driver. Comp. at ¶ 22. Plaintiffs claim that “[i]n the course of his work at defendants’ premises,
 9 Mr. Webb was exposed to benzene through inhalation and dermal absorption of defendants’
 10 gasoline.” Comp. at ¶ 24. This exposure, according to Plaintiffs, resulted in Mr. Webb’s illness
 11 and death. Plaintiffs allege negligence claims against all defendants under theories of premises
 12 liability and failure to warn. *See* Comp. at ¶¶ 27-43.
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14 Turning to the disclosure rule, in order for ConocoPhillips to disclose all relevant “facts,
 15 legal theories, witnesses, documents, and other information relevant to the action,” it must first
 16 understand what Plaintiffs’ case is about. This includes a baseline understanding of Mr. Webb’s
 17 exposure history, including the places he worked, the dates when he worked, and—perhaps most
 18 importantly—the particular fuels he loaded. Comp. at ¶ 22. No matter how Plaintiffs phrase,
 19 position, or categorize their claims, the **particular products** and manufacturers must be identified
 20 before relevant information about those products can be provided. In an automotive case, the make
 21 and model would have to be identified before a car maker would be required to disclose the details
 22 about a car. The same goes here. Generalities from Plaintiffs cannot trump basic fairness.
 23

24 When it comes to the instant case, only some of this information is currently available.
 25 Plaintiffs’ complaint identifies by address nine terminals that each of the defendants allegedly
 26

1 owned. Comp. at ¶ 22. Plaintiff's claim that ConocoPhillips owned two of these locations: (1) South
 2 51st Avenue, Phoenix, Arizona 85043, and (2) 134 North Avenue, Phoenix, Arizona 85005. *Id.*

3 ConocoPhillips has no record of any asset located at "**134 N. 55th Ave., Phoenix, AZ**
 4 **85005.**" Comp. at ¶ 22. It is aware of a terminal previously owned by Continental Oil Company
 5 located off Van Buren Street in between South 55th Avenue and South 51st Avenue. Defendant's
 6 investigation suggests that Continental Oil Company owned the terminal in the 1970s and disposed
 7 of it in the early-to-mid 1980s. Although its investigation remains ongoing, Defendant believes that
 8 a Kinder Morgan-affiliated entity eventually acquired the property but it cannot say when. It is
 9 believed that the Kinder Morgan-affiliated entity owned this terminal during the mid-2000s.

10
 11 ConocoPhillips discloses the following information about the ownership history of the
 12 terminal associated with the address: "**S. 51st Ave., Phoenix, AZ 85043.**" Complaint at ¶ 22. Tosco
 13 Corporation purchased a terminal at this address from Union Oil Company of California in
 14 December 1996. Phillips Petroleum Company acquired the terminal after merging with Tosco in
 15 2001. ConocoPhillips then acquired this asset as part of a merger between Conoco Inc. and Phillips
 16 Petroleum Company. This asset was sold by ConocoPhillips to a Kinder Morgan affiliate in 2008.
 17 With respect to the location at South 51st Avenue, Phoenix, Arizona 85043, neither COP nor a
 18 predecessor company operated the Tosco Terminal at that location before 1997 or after 2008.
 19 Responsive information, to the extent it exists, will only be available for the Tosco Terminal, and
 20 only between 1997 and 2008.

21
 22 In addition, Plaintiffs do not identify when Webb visited the ConocoPhillips terminal during
 23 his thirty-one year career as a gasoline truck driver. COP has yet to identify any evidence suggesting
 24 that Webb loaded gasoline products from the Tosco Terminal. Although its investigation remains
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1 ongoing, COP has not identified any bills of lading or similar tickets reflecting Mr. Webb's
 2 signature or identification number. Records from Mr. Webb's employer, Coastal Transportation,
 3 indicate that Mr. Webb was assigned two employee identification numbers over the course of his
 4 career (3280 and 0490). Neither of these numbers could be found in the limited electronic data that
 5 COP possesses for the Tosco Terminal. Testimony from co-workers of Mr. Webb in this case have
 6 not identified when Mr. Webb loaded at the Tosco Terminal, how often, or what products. COP
 7 cannot be reasonably expected to conduct comprehensive discovery unless and until it is shown
 8 that Mr. Webb visited and worked at the Tosco Terminal between 1997 and 2008. Perhaps
 9 Plaintiffs have incomplete information, have no such information, or are counting on discovering
 10 this information from third parties as this case goes along. The point remains: Defendant has no
 11 idea when Webb loaded fuels (if ever) at a terminal owned or operated by it or one of its predecessor
 12 companies.¹

13 Plaintiffs also fail to identify with sufficient specificity the products that Mr. Webb
 14 allegedly handled. Plaintiffs' pleadings and discovery responses make distinctions between the
 15 terminals and owners, but in describing the relevant products, Plaintiffs simply say "gasoline." See,
 16 e.g., Comp. at ¶¶ 2-24. That is like describing "mail" as the material a particular mailman
 17 encountered. For purposes of this lawsuit, "gasoline" conceivably covers a range of motor fuels,
 18 with slightly different chemical compositions, formulas, additives, and having been derived from
 19 different refining methods and bulk crude oil. Stating that Mr. Webb loaded "gasoline" at a
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 25 ¹ ConocoPhillips was created through the merger of Conoco Inc. and Phillips Petroleum Co. on
 26 August 30, 2002.

1 ConocoPhillips terminal during an unspecified time period between 1985 and 2016 is insufficient
 2 for ConocoPhillips to identify, much less disclose, the product information that actually matters.
 3

4 Once Plaintiffs identify, either through written discovery or deposition testimony, the
 5 specific products that Mr. Webb allegedly handled at a terminal owned by ConocoPhillips (or more
 6 likely from a predecessor), the specific product information—including MSDS sheets and related
 7 materials—will be specifically identified. In the interim, ConocoPhillips is disclosing relevant
 8 information that it either had in its possession, or that it found at the terminal in question.

9 As described herein, ConocoPhillips' investigation into the claims and defenses asserted in
 10 this action continues and, therefore, ConocoPhillips expressly reserves the right to supplement
 11 and/or amend these initial disclosures. ARIZ. R. CIV. P. 26.1(d)(2) ("The duty of disclosure
 12 prescribed in Rule 26.1(a) is a continuing duty, and each party must serve additional or amended
 13 disclosures when new or additional information is discovered or revealed.").

14 **I. FACTUAL BASIS AND LEGAL THEORIES FOR DEFENSES:**

15 A. **Negligence – Premise Liability.** To prevail on this claim, Plaintiffs must prove the
 16 existence of a duty, breach of that duty by Defendant, that the breach was the actual and proximate
 17 cause of injury and the nature and extent of damages. See e.g., *Glaze v. Larsen*, 207 Ariz. 26, 29,
 18 83 P.3d 26, 29 (2004). Here, Plaintiffs cannot satisfy the burden of proof on the elements of their
 19 claim.

20 Mr. Webb was an independent contractor. "Arizona courts have consistently recognized
 21 that a landowner is not liable for the negligent conduct of an independent contractor unless the
 22 landowner has been independently negligent. See *Welker v. Kennecott*, 1 Ariz. App. 395, 401–04,
 23 403 P.2d 330, 336–39 (1965) (citing Restatement (First) of Torts § 409 (1934) ("Except as stated
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1 in §§ 410 to 429, the employer of an independent contractor is not subject to liability for bodily
 2 harm caused to another by a tortious act or omission of the contractor or his servants.”). Here
 3 Plaintiffs have no evidence that ConocoPhillips or any of its predecessors were independently
 4 negligent and ConocoPhillips denies that they breached any duty owed to Mr. Webb. *Barkhurst*
 5 *v. Kingsmen of Route 66, Inc.*, 234 Ariz. 470, 473, 323 P.3d 753, 756 (App. 2014).

6 ConocoPhillips further contends that Plaintiffs are unable to meet their burden of proof as
 7 to causation. Under Arizona law, “it is not sufficient in an action for damages that plaintiff show
 8 a certain injury might have been caused by the negligence of defendants. It is necessary to establish
 9 that the injuries have been so caused.” *Butler v. Long*, 117 Ariz. 395, 396, 573 P.2d 86, 87 (Ariz.
 10 App. 1977). Furthermore, “[t]o establish the causal connection between an accident and injury, a
 11 sine qua non of liability, medical testimony as to the possibility of such causal connection, without
 12 more, is insufficient.” *Id.* (citing *Coca-Cola Company of Tuscon v. Fitzgerald*, 3 Ariz. App. 303,
 13 306, 413 P.2d 869, 872 (1966)). Here, Plaintiffs must be able to prove that gasoline in general
 14 causes the type of injuries that Mr. Webb sustained and that Mr. Webb’s particular injuries were
 15 specifically caused by his exposure at the fuels loading rack at issue. Plaintiffs cannot establish
 16 either general or specific causation in this case.

17 Lastly, to the extent Plaintiffs cannot establish damages, Plaintiffs claim fails. Plaintiff has
 18 the burden of proving its damages with reasonable certainty. *Gilmore v. Cohen*, 95 Ariz. 34, 386
 19 P.2d 81 (1963); *Continental Life & Acc. Co. v. Songer*, 124 Ariz. 294, 304, 603 P.2d 921, 931 (App.
 20 1979); accord *Valley National Bank v. Brown*, 110 Ariz. 260, 517 P.2d 1256 (1974). Speculation
 21 and conjecture cannot provide the basis for any award of damages. *Gilmore*, 95 Ariz. At 36, 386
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1 P.2d at 82. Plaintiffs cannot recover any damages that are not reasonably certain, unrelated, and/or
 2 unnecessary.

3 To the extent Mr. Webb failed to mitigate his damages, Plaintiffs' damages must be reduced
 4 accordingly. One "who is injured as the result of the negligence of another is bound to exercise
 5 ordinary care to prevent or reduce the damages consequent to an injury, and cannot recover
 6 enhanced damages growing out his failure to use such care." *Sanders v. Beckwith*, 79 Ariz. 67, 71,
 7 283 P.2d 235, 238 (1955).

8
 9 In addition, Plaintiffs cannot meet their burden of proof with respect to punitive damages.
 10 "[P]unitive damages are only recoverable under special circumstances . . . Something more than
 11 the mere commission of a tort is always required for punitive damages." *Rawlings v. Apodaco*, 726
 12 P.2d 565, 578 (Ariz. 1986). "Thus, to obtain punitive damages, plaintiff must prove that
 13 defendant's evil hand was guided by an evil mind." *Id.* Plaintiff must prove an evil mind by
 14 establishing the defendant intentionally caused the injury or "consciously pursued a course of
 15 conduct knowing that it created a substantial risk of significant harm to others." *Id.* Thus, an evil
 16 mind is "conduct involving some element of outrage similar to that usually found in a crime." *Id.*
 17 Plaintiffs have no evidence to meet this burden as to ConocoPhillips.

18
 19 B. **Negligence – Failure to Warn.** ConocoPhillips denies that it breached any duty it
 20 owed to Mr. Webb with respect to his failure to warn claim. First, Mr. Webb was not employed by
 21 ConocoPhillips or its predecessors and had no control over the manner in which Mr. Webb was
 22 trained or performed his work duties outside of ConocoPhillips or its predecessor's loading rack.
 23 In addition, Mr. Webb's employers had a non-delegable duty to warn Mr. Webb of the potential
 24 hazards related to his work. Based upon Webb's employer's policies, his commercial driver's
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1 license, and 49 CFR § 177.816, et. seq., Mr. Webb was required by regulation to know the hazards
 2 of the materials that he was transporting. ConocoPhillips and its predecessors made the material
 3 safety data sheets for products loaded or unloaded at its loading rack available to any third party
 4 driver, including Mr. Webb. Each material safety data sheet contained adequate warnings and
 5 content information with respect to the products at the loading rack. Mr. Webb's co-workers
 6 confirmed that material safety data sheets were made available to third party drivers, such as Mr.
 7 Webb.
 8

9 Further, Plaintiffs face the same issue with respect to lack of causation and speculative
 10 damages as outlined above.

11 A. **Assumption of the Risk.** "A plaintiff who fully understands a risk of harm to
 12 himself or his things caused by the defendant's conduct or by the condition of the defendant's land
 13 or chattels, and who nevertheless voluntarily chooses to enter or remain or to permit his things to
 14 enter or to remain within the area of that risk, under circumstances that manifest his willingness to
 15 accept it, is not entitled to recover for harm within that risk". *Hildebrand v. Minyard*, 494 P.2d
 16 1328, 1330 (Ariz. Ct. App. 1972); Restatement (Second) of Torts § 496(C) (1965). Plaintiffs'
 17 claims are barred if Mr. Webb manifested his willingness to accept the risk of exposure by not
 18 following safety precautions, protocols, policies and/or training to prevent the same.

19 B. **Non-Parties at Fault.** ConocoPhillips has already identified the non-parties at fault
 20 pursuant to A.R.S. § 12-2506. Mr. Webb was employed as a tanker truck driver from 1985 to 1993
 21 for Calzona Tankways, Inc. Calzona Tankways, Inc. was responsible for properly instructing
 22 Decedent on how to safely load and unload gasoline and fuels. In addition, Calzona Tankways,
 23 Inc. was responsible for providing the personal protective equipment and training, including
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1 warnings and directives that Plaintiffs allege should have been provided to Mr. Webb by the
2 defendants named in this action. To the extent Plaintiffs allege Mr. Webb contracted MDS from
3 exposure to gasoline or other fuels, it occurred in whole or in part due to Calzona's failure to
4 properly instruct Mr. Webb on how to safely load or unload gasoline or other hazardous materials,
5 failures to properly warn or direct Mr. Webb, failure to instruct Mr. Webb on how to properly wear
6 personal protective equipment, and failure to properly supervise or oversee Mr. Webb. As a
7 company specializing in fueling transportation, Calzona Tankways, Inc. was a sophisticated user
8 (i.e. person of special experience) presumed to be knowledgeable regarding industrial standards
9 and related hazards. The sophistication of this intermediary, in combination with its relationship as
10 employer to the Mr. Webb, imposed upon it a duty to warn the Mr. Webb - if there was a duty to
11 warn at all. For the foregoing reasons, Calzona Tankways, Inc. is wholly or partially at fault in
12 causing the damages alleged and sought by Plaintiffs in this action.
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15 In addition, Mr. Webb was employed as a tanker truck driver from 1994 to 2015 for Coastal
16 Transport Co., Inc. Coastal Transport Co. Inc. was responsible for properly instructing Decedent
17 on how to safely load and unload gasoline and fuels. Coastal Transport Co. Inc. was also
18 responsible for providing the personal protective equipment and training, including warnings and
19 directives that Plaintiffs allege should have been provided to Mr. Webb by the defendants named
20 in this action. To the extent Plaintiffs allege Mr. Webb contracted MDS from exposure to gasoline
21 or other fuels, it occurred in whole or in part due to Coastal's failure to properly instruct Mr. Webb
22 on how to safely load or unload gasoline or other hazardous materials, failures to properly warn or
23 direct Mr. Webb, failure to instruct Mr. Webb on how to properly wear personal protective
24 equipment, and failure to properly supervise or oversee Mr. Webb. As a company specializing in
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1 fueling transportation, Coastal Transport Co., Inc. was a sophisticated user (i.e. person of special
 2 experience) presumed to be knowledgeable regarding industrial standards and related hazards. The
 3 sophistication of this intermediary, in combination with its relationship as employer to Mr. Webb,
 4 imposed upon it a duty to warn Mr. Webb - if there was a duty to warn at all. For the foregoing
 5 reasons, Coastal Transport Co., Inc. is wholly or partially at fault in causing the damages alleged
 6 and sought by Plaintiffs in this action.

7
 8 To the extent additional non-parties at fault are identified through investigation or
 9 discovery, ConocoPhillips will provide appropriate notice in accordance with Rule 26(b)(g).

10
 11 **C. Comparative and Contributory Fault.** The Uniform Contribution Among
 12 Tortfeasors Act (UCATA) abolished joint and several liability. A.R.S. § 12-2506. "Each defendant
 13 is liable only for the amount of damages allocated to that defendant in direct proportion to that
 14 defendant's percentage of fault, and a separate judgment shall be entered against the defendant for
 15 that amount. *Id.* The purpose of the UCATA is to increase fairness among the parties "by making
 16 each tortfeasor liable for only his or her share of fault, and no more." *Hutcherson v. City of Phoenix*,
 17 961 P.2d 449, 452 (Ariz. 1998). To the extent Mr. Webb, other parties, and/or non-parties caused
 18 or contributed to Mr. Webb's injuries or death, Plaintiffs are estopped from seeking recovery from
 19 ConocoPhillips.

20
 21 **D. Affirmative Defenses.** Defendant asserts the following affirmative and other defenses
 22 conditional upon facts, circumstances, and matters learned through discovery,
 23 investigation, disclosure, or from any source whatsoever:

24 a. Plaintiffs' Complaint fails to state a claim upon which relief can be granted and
 25 should be dismissed with prejudiced.

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- 1 b. Plaintiffs' claims are barred by the applicable statutes of limitations and repose.
- 2 c. Plaintiffs' claims are barred by the doctrines of comparative negligence,
- 3 contributory negligence, and assumption of the risk, as well as avoidable
- 4 consequences. Mr. Webb failed to exercise ordinary care for his own safety and
- 5 well-being in failing to follow proper safety protocols, written policies and
- 6 procedures, warnings, and safe work practices.
- 7 d. ConocoPhillips is not liable for any pre-judgment interests or any punitive
- 8 and/or exemplary damages which may be sought by Plaintiffs in this matter.
- 9 e. ConocoPhillips had not duty or responsibility with regard to the manner,
- 10 method, and means for the performance of Mr. Webb's work. No relationship
- 11 existed between Plaintiffs, including Mr. Webb, and ConocoPhillips which
- 12 created any duty on the part of ConocoPhillips regarding the manner, method,
- 13 or conditions under which Mr. Webb performed his work. ConocoPhillips had
- 14 no right to control the manner, method or conditions under which Mr. Webb
- 15 performed his work.
- 16 f. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, laches, license
- 17 and permitted activity.
- 18 g. At all relevant times, ConocoPhillips complied with all applicable laws,
- 19 regulations, policies and standards.
- 20 h. ConocoPhillips affirmatively denies that there is valid medical or scientific
- 21 evidence that meets the criteria for admission into evidence under the standard
- 22 articulated in *Daubert v. Merrill Dow Pharmaceuticals*, 113 S.Ct. 2786 (1993),
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that any of Mr. Webb's injuries or diseases were caused by exposure to the complained of product(s).

- i. Plaintiffs' claims are barred by the Bulk Supplier/Sophisticated User Doctrine and the Learned Intermediary Doctrine.
- j. Plaintiffs' claims are barred, in whole or in part, by the Federal Hazardous Substances Labeling Act.
- k. No act or omission by ConocoPhillips caused or contributed to the harm alleged by Plaintiffs.
- l. Plaintiffs cannot show that Mr. Webb had any exposure to any product at the Tosco Terminal, or that his exposure, if any, was in sufficient quantity to have been a proximate or producing cause of any injury alleged by Plaintiffs. Further, Plaintiffs cannot show that Mr. Webb's exposure, if any, to any benzene-containing product caused or contributed to, or was a substantial factor in bringing about, the alleged injury, condition or damages alleged in Plaintiffs' Complaint.
- m. Prior to Plaintiffs' non-suit or dismissal of any claims against any other party, ConocoPhillips specifically asserts its right to a submission of any non-suited or dismissed party as a non-party at fault as well as the submission of any other current party subsequently dismissed and any settling person or parties.
- n. Mr. Webb's injuries complained of herein were brought about wholly by a new and independent cause or causes not reasonably foreseeable by ConocoPhillips and; therefore, such new and independent cause or causes became the immediate

1 and efficient cause or causes of injury to the extent that any and all of the
2 allegedly negligence acts and/or omissions complained of by Plaintiffs against
3 ConocoPhillips were wholly remote and non-causative of the injuries
4 complained of by Plaintiffs.

- 5 o. To the extent Mr. Webb smoked tobacco products despite being aware of the
6 health hazards of smoking tobacco cigarettes, if any damages are awarded, then
7 those damages should be reduced in whole or in part by the damage caused by
8 cigarette smoking.
- 9 p. To the extent Mr. Webb smoked tobacco products despite being aware of the
10 health hazards associated with smoking and any warning given by his doctors,
11 recovery should be barred to the extent he failed to mitigate these damages.
- 12 q. To the extent that smoking caused or contributed to the cause of Mr. Webb's
13 injuries or diseases, then Plaintiffs' claims should be reduced in whole or in part
14 by the damages caused by cigarette smoking.
- 15 r. Plaintiffs' claims based upon improper warnings, labels, or disclosure fail as a
16 matter of law because the complained of product(s), at all relevant times,
17 complied with applicable OSHA standards regarding labels and warnings for
18 products which contain trace amounts of benzene, a preemption of the state law
19 claims.
- 20 s. Plaintiffs' claims based on workplace exposure, warnings, labels, training and/or
21 protective equipment fail as a matter of law because they impermissibly seek to
22 shift the burden of providing a safe workplace, which OSHA imposes upon the
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1 employer, to ConocoPhillips, a violation of the statutes which preempt the state
2 law claims.

3 t. Plaintiffs cannot identify any alleged benzene-containing product to which Mr.
4 Webb was specifically exposed that was manufacture, marketed, or supplied by
5 ConocoPhillips.

6 u. Mr. Webb received adequate training regarding safe handling of the complained
7 of product(s).

8 v. Plaintiffs' injuries and damages, if any, were caused by an act of nature beyond
9 the control of Defendant and/or were the natural and ordinary consequence of
10 life.

11 w. Plaintiffs' injuries and damages, if any, were caused by acts or omissions of
12 persons or entities beyond the control of Defendant.

13 x. Plaintiffs' injuries and damages, if any, were solely and proximately caused by
14 a superseding or intervening set of causes and events put in motion by others,
15 including but not limited to liable third parties.

16 y. Plaintiffs have failed to join all necessary and/or indispensable parties to this suit
17 pursuant to Rule 19 of the Arizona Rules of Civil Procedure.

18 z. Plaintiffs' claims are barred, in whole or in part, because they failed to mitigate
19 any damages they allegedly suffered.

20 aa. ConocoPhillips alleges that all or some of Plaintiffs' claims are barred as a
21 matter of law due to statutory compliance. See Restatement (Third) of Torts:
22 Product Liability § 4 cmt. e.

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- 1 bb. Plaintiffs' alleged damages, if any, should be apportioned among all parties at
2 fault, and any nonparties at fault, pursuant to the Uniform Contribution Among
3 Tortfeasors Act. *See, e.g.*, A.R.S. 12-2501, *et seq.*
- 4 cc. Plaintiffs' claims for punitive or exemplary damages violate provisions of the
5 United States and Arizona Constitutions, including the Due Process Clause of
6 the Fourteenth Amendment to the United States and Article 2, Section 4 of the
7 Arizona Constitution.
- 8 dd. Plaintiffs' claims for punitive or exemplary damages may be barred by Article
9 II, Section 35 of the Arizona Constitution.
- 10 ee. Plaintiffs' request for punitive or exemplary damages violates ConocoPhillips's
11 right to equal protection under the law under both the United States Constitution
12 and the Arizona Constitution, and therefore fails to state a basis upon which
13 either punitive or exemplary damages can be awarded.
- 14 ff. During the period of time for which Plaintiffs have asserted a claim for injuries
15 and damages, the Worker's Compensation Law of the State of Arizona provided
16 that a person suffering from an alleged occupational disease could claim
17 worker's compensation disability benefits against his last employer at the time
18 the disease was discovered. ConocoPhillips would show that if Mr. Webb indeed
19 contracted an illness or injury because of his occupation, the alleged injury or
20 illness is due to the nature of the occupation and was acquired over a long period
21 of time and is not the result of working with any particular product or the use of
22 any particular product.
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1 gg. Plaintiffs' claims may be barred by other affirmative defenses that may come to
2 light during disclosure and discovery, including the failure of conditions
3 precedent, spoliation, and limitations imposed by law.

4 ConocoPhillips reserves the right to supplement or amend this section and plead additional
5 or different defenses and/or affirmative defenses.

6 **III. LAY WITNESSES DEFENDANT EXPECTS TO CALL AT TRIAL:**

7 ConocoPhillips is yet to identify the lay witnesses it expects to call at trial. ConocoPhillips
8 will call all custodians of records needed to provide the foundation for the admissibility of exhibits.
9 It may also call some or all of the witnesses listed by Plaintiffs and other defendants, including
10 current and former employees and corporate representatives. ConocoPhillips reserves the right to
11 supplement or amend this section in accordance with Rule 26.1(d)(2). ConocoPhillips preliminary
12 identifies the following trial witnesses:

13
14 **Ms. Mary Major**
15 c/o Keith Patton, Esq.
16 Patton Law, P.C.
17 500 Copper Ave NW, Suite 100
18 Albuquerque, NM 87102
19 Tel.: (505) 910-4800

20 Ms. Major is a plaintiff in this case. It is anticipated that she will testify about her
21 knowledge of Decedent's work history, medical history and other relevant matters.
22 Additional information may be developed in her deposition.

23
24 **Mr. Joshua Major**
25 c/o Keith Patton, Esq.
26 Patton Law, P.C.
500 Copper Ave NW, Suite 100
Albuquerque, NM 87102
Tel.: (505) 910-4800

1 Mr. Major is a plaintiff in this case. It is anticipated that he will testify about his
2 knowledge of Decedent's work history, medical history and other relevant matters.
3 Additional information may be developed in his deposition.

4 **Mark Loudermilk**

5 Address & Telephone Number Unknown

6 Upon information and belief, Mr. Loudermilk was Decedent's co-worker. It is
7 anticipated that he will be presented to offer testimony regarding Decedent's work history,
8 working conditions, other issues relating to Decedent's employment, and other relevant
9 matters.

10 **Representatives of ConocoPhillips (and predecessors)**

11 c/o Norton Rose Fulbright
12 1301 McKinney, Suite 5100
13 Houston, Texas 77010
14 (713) 651-5151

15 ConocoPhillips representatives, and others who may be identified in discovery, are
16 expected to testify about their policies, procedures, training, work requirements, safety
17 measures, safety protocols, maintenance, test results, permitting, records, or lack thereof,
18 related to Mr. Webb, equipment, emissions, and other factual circumstances in this case.
19 ConocoPhillips's representatives are expected to testify consistent with any deposition
20 and/or written statement in this matter.

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1 **IV. OTHER PERSONS DEFENDANT BELIEVES MAY HAVE RELEVANT**
 2 **KNOWLEDGE OR INFORMATION:**

4	Ms. Mary Major c/o Keith Patton, Esq. Patton Law, P.C. 500 Copper Ave NW, Suite 100 Albuquerque, NM 87102 Tel.: (505) 910-4800	Party, witness, custodian of records.
7	Mr. Joshua Major c/o Keith Patton, Esq. Patton Law, P.C. 500 Copper Ave NW, Suite 100 Albuquerque, NM 87102 Tel.: (505) 910-4800	Party, witness, custodian of records.
11	Mark Loudermilk Address Unknown Phone Number Unknown	Co-worker. Time period unknown. Mr. Loudermilk may have knowledge about Mr. Webb's history, work conditions, and training.
13	Gene Martin Address Unknown Phone Number Unknown	Co-worker. Time period unknown. Mr. Martin may have knowledge about Mr. Webb's history, work conditions, and training.
15	Jim Melvin Address Unknown Phone Number Unknown	Co-worker. Time period unknown. Mr. Melvin may have knowledge about Mr. Webb's history, work conditions, and training.
17	Robert Super Address Unknown Phone Number Unknown	Co-worker. Time period unknown. Mr. Super may have knowledge about Mr. Webb's history, work conditions, and training.
19	Dennis Gilmore Terminal Supervisor 2000-2008 c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Gilmore is a former supervisor of the Terminal and may offer testimony regarding the operations of the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures at the Terminal governing the loading and unloading of fuel products, Terminal training programs, Terminal health and safety procedures, regulatory compliance at the Terminal, the Terminal's industrial hygiene monitoring program, and experience with third-party driving companies such as Decedent's former employer.
24	Doug Kleopfer Terminal Supervisor 1999-2000	Mr. Kleopfer is a former supervisor of the Terminal and offer testimony regarding the operations of the Terminal, equipment used at the Terminal for loading and unloading

1	c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	fuel products, procedures at the Terminal governing the loading and unloading of fuel products, Terminal training programs, Terminal health and safety procedures, regulatory compliance at the Terminal, the Terminal's industrial hygiene monitoring program, and experience with third-party driving companies such as Decedent's former employer.
5	Bill Crawford Terminal Supervisor Unknown – 1999 c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Crawford is a former supervisor of the Terminal and offer testimony regarding the operations of the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures at the Terminal governing the loading and unloading of fuel products, Terminal training programs, Terminal health and safety procedures, regulatory compliance at the Terminal, the Terminal's industrial hygiene monitoring program, and experience with third-party driving companies such as Decedent's former employer.
9	Don Williams Former Senior Operator c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Williams is a former operator of the Terminal. Mr. Williams may offer testimony regarding the operations of the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures at the Terminal governing the loading and unloading of fuel products, regulatory compliance at the Terminal, the Terminal's industrial hygiene monitoring program, and experience with third-party driving companies such as Decedent's former employer.
13	Mario Ramierz Former Operator c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Ramierz is a former operator of the Terminal. Mr. Ramierz may offer testimony regarding the operations of the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures at the Terminal governing the loading and unloading of fuel products, regulatory compliance at the Terminal, the Terminal's industrial hygiene monitoring program, and experience with third-party driving companies such as Decedent's former employer.
17	Michael Drappo Former Operator c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Drappo is a former operator of the Terminal. Mr. Drappo may offer testimony regarding the operations of the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures at the Terminal governing the loading and unloading of fuel products, regulatory compliance at the Terminal, the Terminal's industrial hygiene monitoring program, and experience with third-party driving companies such as Decedent's former employer.

1	Sean McCallister Former Operator c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. McCallister is a former operator of the Terminal. Mr. McCallister may offer testimony regarding the operations of the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures at the Terminal governing the loading and unloading of fuel products, regulatory compliance at the Terminal, the Terminal's industrial hygiene monitoring program, and experience with third-party driving companies such as Decedent's former employer.
2	Larry Silva Tosco Corporation HSE Manager, Western Assets 1998-2001 ConocoPhillips Company/Phillips 66 Company Environmental Manager, Western Assets 2000-unknown c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Silva was a Health, Safety and Environmental Manager for Tosco Corporation between 1998-2001. His area of responsibility covered Tosco's western assets, including the Terminal. Mr. Silva was an Environmental Manager for ConocoPhillips Company and Phillips 66 Company between 2002 and 2008. Mr. Silva may offer testimony regarding policies and procedures governing health and safety at the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures governing the loading and unloading of fuel products, Terminal training programs, the environmental history of the Terminal, and regulatory compliance at the Terminal, and experience the Terminal's industrial hygiene monitoring program, with third-party driving companies such as Decedent's former employer
3	Tom Thompson Tosco Corporation/ConocoPhillips Company Safety Coordinator, Southern Terminals and Pipelines 1998-2008 c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Thompson was a Safety Coordinator for Tosco and ConocoPhillips between 1998 and 2008. His territory of responsibility included the Terminal. Mr. Thompson may offer testimony regarding policies and procedures governing health and safety at the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures governing the loading and unloading of fuel products, the Terminal's industrial hygiene monitoring program, Terminal training programs, regulatory compliance at the Terminal, and experience with third-party driving companies such as Decedent's former employer.
4	Al Cantu Health/Safety/Emergency Coordinator c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Cantu was a Health/Safety/Emergency Coordinator for Tosco and ConocoPhillips Company between 2001 and 2004. His territory of responsibility included the Terminal. Mr. Cantu may offer testimony regarding policies and procedures governing health and safety at the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures governing the loading and unloading of fuel products, the Terminal's industrial hygiene monitoring program, Terminal training programs, regulatory compliance at the Terminal, and experience with

1		third-party driving companies such as Decedent's former employer.
2	Abe Castro c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Castro may offer testimony regarding policies and procedures governing health and safety at the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures governing the loading and unloading of fuel products, the Terminal's industrial hygiene monitoring program, Terminal training programs, regulatory compliance at the Terminal, and experience with third-party driving companies such as Decedent's former employer.
3	Cornelius Flynn c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Flynn may offer testimony regarding policies and procedures governing health and safety at the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures governing the loading and unloading of fuel products, the Terminal's industrial hygiene monitoring program, Terminal training programs, regulatory compliance at the Terminal, and experience with third-party driving companies such as Decedent's former employer.
4	Robert Lowe Former Operator c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Lowe is a former operator of the Terminal. Mr. Lowe may offer testimony regarding the operations of the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures at the Terminal governing the loading and unloading of fuel products, regulatory compliance at the Terminal, the Terminal's industrial hygiene monitoring program, and experience with third-party driving companies such as Decedent's former employer.
5	Vance Webb ConocoPhillips Company Director of Health & Safety, Western Assets 2002-2008 c/o Brett J. Young Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, Texas 77002	Mr. Webb was the Director of Health and Safety for western assets owned and operated by ConocoPhillips Company between 2002 and 2008. His area of responsibility included the Terminal. Mr. Webb may offer testimony regarding policies and procedures governing health and safety at the Terminal, equipment used at the Terminal for loading and unloading fuel products, procedures governing the loading and unloading of fuel products, Terminal training programs, regulatory compliance at the Terminal, the Terminal's industrial hygiene monitoring program, and experience with third-party driving companies such as Decedent's former employer.
6	Coastal Transport Company, Inc. 1214 S. 51st Ave., Phoenix, AZ 85043	Employer 1985-2016
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1	Phone Number Unknown	Employees and representatives of Coastal Transport
2	Custodian of Records Coastal Transport Company, Inc. Address Unknown Phone Number Unknown	Company, Inc. may have knowledge about Mr. Webb's history, employment, work conditions, and training.
3	Calzona Tankways Address Unknown Phone Number Unknown	Employer 1985-2016
4	Custodian of Records Calzona Tankways Address Unknown Phone Number Unknown	Employees and representatives of Calzona Tankways may have knowledge about Mr. Webb's history, employment, work conditions, and training.
5	Dr. Manpreet Chadha Palo Verde Cancer Specialists 5601 W. Eugie Ave., Suite 106 Glendale, AZ 85304	Treated Mr. Webb for MDS.
6	Lois D. Salo, Custodian of Records Various Medical Providers Banner Estrella Medical Center 9201 W. Thomas Road Phoenix, AZ 85037	Treated Mr. Webb for MDS.
7	Dr. Robert Cercek 18444 N. 25th Ave., Ste. 210 Phoenix, AZ 85023	Performed knee surgery on Mr. Webb.

17 As discovery is in its early stages, ConocoPhillips reserves the right to supplement this
18 section.

19 **V. PERSONS KNOWN BY DEFENDANT TO HAVE GIVEN WRITTEN OR
20 RECORDED STATEMENTS:**

21 ConocoPhillips is currently unaware of any such statements.

22 **VI. EXPERT WITNESSES:**

23 ConocoPhillips will designate expert witnesses and supplement this section in accordance
24 with Rule 26.1(d)(2) and the Scheduling Order entered by the Court.

25 **VII. DAMAGES:**

1 ConocoPhillips is not affirmatively seeking damages, but it disputes the amount and method
 2 of calculating the damages claimed by Plaintiffs and seeks to cross examine all witnesses offered
 3 by Plaintiffs on those subjects.

4 **VIII. TANGIBLE EVIDENCE & RELEVANT DOCUMENTS**

6	Carrier Access Agreement Between Tosco and Coastal	PSXMAJ00000001-03
7	Industrial Hygiene Monitoring Data from Phoenix Terminal	PSXMAJ00000004-06
8	Coastal Delivery Data	PSXMAJ00000007-31
9	Schedule of Terminal Acquired by Tosco from Union Oil Company of California	PSXMAJ00000032-33
10	Coastal Delivery Data	PSXMAJ00000034
11	Terminal Access Agreement between ConocoPhillips and Coastal	PSXMAJ00000035-39
12	2012 ConocoPhillips Consent to Assign	PSXMAJ00000040-41
13	Master Motor Carrier Services Agreement Between ConocoPhillips and Coastal	PSXMAJ00000042-68
14	Bills of Lading regarding Eugene (Gene) Martin	PSXMAJ00000069-111
15	Coastal Delivery Data	PSXMAJ00000112 PSXMAJ00000113 PSXMAJ00000114-188
16	Organizational Charts	PSXMAJ00000189-235
17	Hazard Communication Policy	PSXMAJ00000236-242

1	Respiratory Protection Standard	PSXMAJ00000243-266
2	Sample Forms	PSXMAJ00000267-272
3	Air Emission and Vapor Recovery Unit Reports	PSXMAJ00000273-334
4	Air Permitting, Air Emission, and Vapor Recovery Unit Reports	PSXMAJ00000335-590
5	Air Permitting Documents, Air Emission Reports, Storage Tank Inspection Reports, and Vapor Recovery Unit Maintenance and Inspection Reports	PSXMAJ00000591-1394
6	Phoenix Terminal Work Instructions	PSXMAJ00001395-1652
7	Tesco Spill Response Plan for Phoenix Terminal	PSXMAJ00001653-1905
8	Air Permitting, Air Emission, and Vapor Recovery Unit Reports	PSXMAJ00001906-2131
9	Air Permitting, Air Emission, and Vapor Recovery Unit Reports	PSXMAJ00002132-2360
10	Phoenix Terminal Environmental Manuals	PSXMAJ00002361-2422
11	Air Permitting, Air Emission, and Vapor Recovery Unit Reports	PSXMAJ00002423-2686
12	Phoenix Terminal Strategic Plan	PSXMAJ00002687-2807
13	Health, Environmental & Safety Manual	PSXMAJ00002808-3211
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1	Material Safety Data Sheets	PSXMAJ00003212-3491
2	found at Phoenix Terminal	
3	Phoenix Terminal Emergency	PSXMAJ00003492-4382
4	Response Plan	
5	Monthly Load Rack Inspection	PSXMAJ00004383-4431
6	Reports	
7	Storage Tank Inspection Reports	PSXMAJ00004432-4465
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9	Information Regarding Terminal	PSXMAJ00004466-4470
10	Safety Policies and Driver	
11	Information	
12	Vapor Monitoring Reports	PSXMAJ00004471-4493
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14	Seal Inspection logs	PSXMAJ00004494-4580
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16	Driver Domeout Lists	PSXMAJ00004581-4592
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18	Quarterly Emergency Shutdown	PSXMAJ00004593
19	Check	
20	Operator Inspections	PSXMAJ00004594-4610
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22	Vapor Recovery Unit	PSXMAJ00004611-4622
23	Preventative Maintenance	
24	Checklist	
25	Vapor Recovery Unit Documents	PSXMAJ00004623-4636
26		
25	Air Permit and Vapor Recovery	PSXMAJ00004637-4647
26	Unit Documents	

1	Vapor Recovery Unit Operation	PSXMAJ00004648-4660
2	Phoenix Terminal Facility Inspection Reports	PSXMAJ00004661-4864
3	Driver Infractions	PSXMAJ00004865-4866
4	Driver Information	PSXMAJ00004867-4947
5	Air Permit Documents	PSXMAJ00004948-4978
6	Industrial Hygiene Monitoring Data	PSXMAJ00004979-5042
7	Load Rack and Driver Loading Card Agreement for Elwyn Webb and Other Drivers	PSXMAJ00005043-5197
8	Driver Information	PSXMAJ00005198-5236
9	Phoenix Terminal Canopy Project Information	PSXMAJ00005237-5365
10	Vapor Recovery Pressure Monthly Check	PSXMAJ00005366-5376
11	Vapor Recover Unit Preventative Maintenance Checklist	PSXMAJ00005377-5596
12	Phoenix Terminal Masterplan	PSXMAJ00005597-5743
13	Material Safety Data Sheets found at Phoenix Terminal	PSXMAJ00005744-5795
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1	Vapor Recovery Unit Maintenance Logs and Documents	PSXMAJ00005796-5859
2	Driver Domeot and Overfill Reports	PSXMAJ00005860-6278
3	Phoenix Terminal Domeout/Loadrack Information	PSXMAJ00006279-6333
4	Phoenix Terminal Inspection Reports	PSXMAJ00006334-6411
5	Phoenix Terminal Information	PSXMAJ00006412-6546
6	Phoenix Terminal Permit Information	PSXMAJ00006547-6716
7	Phoenix Terminal Operating Documents	PSXMAJ00006717-6961
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15 **IX: INSURANCE AGREEMENTS:**

16 ConocoPhillips produces the following documents:

17	Canal Insurance Policies	PSXMAJ00006962-7949
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20 In addition, ConocoPhillips refers Plaintiffs to the Master Motor Carrier Services
21 Agreement between ConocoPhillips and Coastal, PSXMAJ00000042-68.
22

1 NORTON ROSE FULBRIGHT US LLP
2

3 By: /s/ Michael B. McTaggart

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16 **COUNSEL FOR DEFENDANT**
17 **CONOCOPHILLIPS COMPANY**

18 COPY of the foregoing delivered this
19 14th day of May 2019, to:

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34 (*pro hac vice pending*)

35 **ATTORNEYS FOR PLAINTIFFS**